

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

SIMON GOGOLACK

Defendant.

**23-CR-99-LJV-JJM**

**RESPONSE BY DEFENDANT  
JOHN ERMIN TO  
GOVERNMENT APPEAL OF  
THE MAGISTRATE JUDGE  
DECISION AND ORDER**

Defendant, John Ermin,, was initially charged on December 7, 2023, with violation of 18 USC §922(g)(3). On January 3, 2024, a superceding indictment was filed which is the subject of this discovery. In any respect, Mr. Ermin has been incarcerated since December 7, 2023 to this date.

The response to the government's appeal by Defendant Gogolack, (DK243), sets forth the history of the government's failure to provide discovery and the later request of a protective order.

The Magistrate Judge McCarthy found that the government acted in bad faith as a result of their action in providing discovery. The government admitted it made a "conscious decision" to delay discovery..


Upon receipt of the Protective Order I immediately contacted the U.S. Attorney's Office and objected specifically to the provision that precluded the Defendant from, in essence, having "any agent of Defendant or this attorney" utilize members of the Outlaws Motorcycle Club in preparation of our defense, In essence, we would have to disclose who we were using in gathering and reviewing the governments discovery information. At the time of the return of the Judge's request for sanctions on August 23, 2023, we asked for much more severe sanctions, including dismissal of the indictment. Magistrate Judge McCarthy tailored the sanctions to a rather limited

response to the government's bad faith actions. His decision was not clearly erroneous, which is the standard that should be followed in overturning a non-dispositive motion.

Defendant Ermin joins in all other responses filed herein.

WHEREFORE, we ask the Court to deny the government's request.

DATED: October 7, 2024



GEORGE V. C. MUSCATO  
Attorney for the Defendant